

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



**TRANSCRIPT OF RECORD.**

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**Court of Appeals, District of Columbia**

**APRIL TERM, 1902**

**No. 1223.**

**167**

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**No. 14, SPECIAL CALENDAR.**

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**ROBERT WEST, APPELLANT,**

***vs.***

**THE UNITED STATES.**

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**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

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**FILED MAY 21, 1902.**



# COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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# In the Court of Appeals of the District of Columbia

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ROBERT WEST, Appellant, }  
vs. } No. 1223.  
THE UNITED STATES. }

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a Supreme Court of the District of Columbia.

UNITED STATES }  
vs. } No. 23179. Criminal.  
ROBERT WEST. }

UNITED STATES OF AMERICA, { ss:  
District of Columbia, }

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Indictment.*

Filed in Open Court Mar. 7, 1902.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

DISTRICT OF COLUMBIA, ss:

January Term, A. D. 1902.

The grand jurors of the United States of America in and for the District of Columbia aforesaid upon their oath do present:

That one Robert West, late of the District aforesaid, on the sixteenth day of January, in the year of our Lord one thousand nine hundred and two, at the District aforesaid, about the hour of eleven of the daytime of the same day, with force and arms, a certain building—that is to say, the apartment house called the Christiani flats, belonging to Antoinette D. Christiani, there situate—unlawfully did enter with intent to commit therein the crime of larceny, to wit, with intent the goods, chattels, and property in the said building then and there being unlawfully to steal, take, and carry away, against the form of the statute in such case made and provided and against the peace and Government of the said United States.

ASHLEY M. GOULD,  
*Attorney of the United States in and  
for the District of Columbia.*

(Endorsed :) No. 23179. United States vs. Robert West. House-breaking. H. W. Forteney, M. P.; Thomas C. Barr, Harry Gibson. A true bill. Geo. W. Linkins, foreman.

2 Supreme Court of the District of Columbia.

THURSDAY, *March 13*, 1902.

The court resumes its session pursuant to adjournment, Mr. Justice Anderson presiding.

\* \* \* \* \*

UNITED STATES	}	No. 23179. Indicted for Housebreaking.
vs.		
ROBERT WEST.		

Come as well the attorney of the United States as the defendant in proper person, in custody of the warden of the jail of the District of Columbia. and thereupon, the defendant being arraigned upon the indictment, he pleads thereto not guilty, and for trial puts himself upon the country and the attorney of the United States doth the like.

*Memorandum.*

April 9, 1902.—Jury sworn; verdict, guilty as indicted.

3

*Motion for New Trial.*

Filed Apr. 14, 1902.

In the Supreme Court of the District of Columbia.

UNITED STATES	}	No. 23179.
vs.		
ROBERT WEST.		

Now comes the defendant, Robert West, by his attorney, and moves the court for a new trial in the above-entitled cause, and for reasons therefore shows to this court:

1. That the verdict is contrary to the evidence.
2. That the verdict is contrary to the weight of the evidence.
3. That the court erred in instructing the jury.
4. That the court erred in admitting evidence contrary to law.
5. That the jury misconducted themselves.
6. That the defendant was surprised during the trial, and that new and material facts have come to light since the trial, as per affidavits attached.

JAS. S. McDONOGH,  
*Att'y for Def't.*



4

*Affidavit of James S. McDonogh.*

Filed Apr. 14, 1902.

I, James S. McDonogh, being first duly sworn, on oath depose and say that I am the attorney for Robert West in the case of United States vs. West, criminal case No. 23179, tried in criminal court No. 2 of the supreme court of the District of Columbia, and that on the 9th day of April, 1902, in the room adjoining the court-room, the ass't district attorney for the U. S. in the District of Columbia made the following statement: "One of the jurors asked me, 'Has the defendant ever been arrested before?' To which I answered that I did not know." The above statement was made by Mr. Peyton Gordon, holding the position aforesaid and representing the Government during the said trial. The question was asked during said trial, but was unknown to the defendant or his attorney for him; nor was same called to the attention of the court. The affiant further says that he did not learn of said conversation between the said juror and the said ass't district attorney until after the judge had instructed the said jury and they had retired to consider their verdict.

JAS. S. McDONOGH,  
*Att'y for Def't.*

Subscribed and sworn to before me this 14th day of April, 1902.

WM. D. SULLIVAN,  
[SEAL.] *Notary Public in and for the District of Columbia.*

5

Supreme Court of the District of Columbia.

FRIDAY, May 2, 1902.

The court resumes its session pursuant to adjournment, Mr. Justice Barnard presiding.

\* \* \* \* \*

UNITED STATES	}	No. 23179. Convicted of Housebreaking.
vs.		
ROBERT WEST.		

Come as well the attorney of the United States as the defendant in proper person, in custody of the warden of the jail of the District of Columbia, and by his attorney, James S. McDonogh, Esquire; whereupon, the defendant's motion for a new trial having been heretofore argued and submitted, it is considered by the court that said motion be, and it is hereby, overruled; whereupon it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him, and he says nothing except as he has already said; whereupon it is considered by the court that for his said offense the defendant be taken by the warden aforesaid to the common jail from whence he came,

thence to the West Virginia penitentiary, at Moundsville, West Virginia, there to be imprisoned and kept at labor for the period of five (5) years, to take effect from date of arrival at said penitentiary; whereupon the defendant, by his attorney, notes an appeal to the Court of Appeals of the District of Columbia from the judgment of the court in this cause, which is granted, and thereupon it is ordered by the court that the defendant be not required to furnish a bond for costs on his said appeal, and the U. S. attorney in open court waives the issuance of a citation; whereupon it is  
 6 ordered by the court that the clerk of this court prepare a transcript of the record in this cause without cost to the defendant.

Supreme Court of the District of Columbia.

FRIDAY, May 9, 1902.

The court resumes its session pursuant to adjournment, Mr. Justice Barnard presiding.

UNITED STATES	}	No. 23179. Convicted of Housebreaking.
vs.		
ROBERT WEST.		

Now comes here the defendant, by his attorney, James S. McDonogh, Esquire, and presents to the court his bill of exceptions to the rulings of the court taken at the trial of this cause, and prays that the same may be signed, sealed, and made a part of the record, which is done accordingly *nunc pro tunc*.

7

*Bill of Exceptions.*

Filed May 9, 1902.

In the Supreme Court of the District of Columbia.

UNITED STATES	}	Criminal Case. No. 23179.
vs.		
ROBERT WEST.		

The foregoing case coming to trial April 9th, 1902, the Government, in order to maintain their issue, put on the stand as a witness Officer FORTENAY, who testified, in substance, as follows:

"I am a member of the Metropolitan police force. On the 16th of Jan., 1902, about 2.30 p. m., I was sent to the drug store at the N. W. cor. of 7th & M Sts. N. W. and arrested the prisoner. I took him to the station-house and into the witness-room, and he told me various things, which on investigation I found were not true. I took him in there again about 6 p. m. and he was all right, but would not talk much. I again brought him in about 11 p. m. and, without making any promises of favor, nor any threats, nor holding out any

inducements to him, he made a confession to me." On examination the officer testified as follows: "I said, 'You have been telling me a pack of lies, now you had better tell the truth.'"

Defendant, by his counsel, then objected to the admission of the alleged confession, for the reason that a confession made under such circumstances and in reply to such expression was deemed involuntary in law. Objection was overruled and an exception noted.

8 The officer then said the defendant confessed as follows: I got in the house with a shoe-buttoner. I intended to steal anything I could get. I make a business of housebreaking. I have been at it for three or four years." Sergt. SPRINKLE was also called on the part of the Gov't and corroborated the testimony of Officer Fortenay regarding the circumstances surrounding the making of said confession, and also said, I heard Officer Fortenay say to defendant, "You had better tell the truth." It was then about 11.30 p. m. The prisoner was coatless and shoeless at the time."

Defendant's counsel objected to the above testimony on the same grounds as before stated, but it was admitted over his objection and an exception to the ruling noted.

The defendant then took the stand as a witness in his own behalf and denied wholly the alleged confession as testified to by said officers.

The court in its charge to the jury, among other instructions given, instructed them to consider the relations of the parties, the conversation between the officers and defendant, and the time and place when the alleged confession took place, and it was for them to decide whether or not, under all the circumstances surrounding its making, it was a voluntary confession. If they considered it as involuntary, then they should disregard it; but if they found that it was made voluntarily, then it should be taken into consideration when they rendered their verdict.

Exception was taken to the above instruction on the ground that it was a matter for the court to decide whether said confession was voluntary or involuntary.

9 Defendant, by his attorney, moved the court to sign and seal this bill of exceptions, which motion was granted, and accordingly the court signs this the def't's bill of exceptions, to have same force and effect aforesaid, now for then, this 9th day of May, 1902.

JOB BARNARD,  
*Associate Justice of the Supreme Court of the D. C.*

10

*Order for Record.*

Filed May 16, 1902.

In the Supreme Court of the District of Columbia, the 16th Day of May, 1902.

UNITED STATES	}	Criminal Case. No. 23179.
vs.		
ROBERT WEST.		

The clerk of said court will please have record in above case contain the indictment, verdict, motion for new trial, and affidavit as to misconduct of juror, bill of exceptions and judgment of court; also order for transcript of record *in forma pauperis*.

JAS. S. McDONOGH,  
*Attorney for Robert West.*

11 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, { ss:  
*District of Columbia,*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 10, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 23179, criminal, United States vs. Robert West, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe  
Seal Supreme Court my name and affix the seal of said court, at  
of the District of the city of Washington, in said District,  
Columbia. this 21 day of May, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme Court. No. 1223. Robert West, appellant, vs. The United States. Court of Appeals, District of Columbia. Filed May 21, 1902. Robert Willett, clerk.

